

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 878 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR ISHWARLAL @ NATVARLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 878 of 2001

MR MB AHUJA for Petitioner No. 1

MS SM AHUJA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2002

ORAL JUDGEMENT

The petitioner came to be externed from the
Districts of Ahmedabad Rural, Ahmedabad City,

Surendranagar, Mehsana and Gandhinagar for a period of two years by virtue of an order passed by the Sub Divisional Magistrate, Viramgam on June, 30, 2001, in exercise of powers under Section 56B of the Bombay Police Act. Before passing the order, a notice under Section 59 of the Bombay Police Act was given. The notice was replied to by the petitioner on 12th June, 2001. The authority after considering the contentions raised, came to a conclusion that the petitioner is required to be externed from the above stated areas and the order was passed.

2. The order of the externing authority was challenged before the Government. The appellate authority after considering the contentions raised before it, dismissed the appeal by an order dated 19th Sept. 2001, confirming the order of externment.

3. The petitioner has approached this Court under Art. 226 of the Constitution to challenge the said orders on the grounds stated in the petition.

4. Ms. Ahuja for the petitioner has restricted her arguments to the fact that in absence of any material, the petitioner has been externed from the contiguous districts of Ahmedabad City, Surendranagar, Mehsana and Gandhinagar and therefore the order of externment would be vitiated. She has placed reliance on the decision of this Court in case of Mustufamiya Pirsahedmiya Saiyed Vs. State of Gujarat, reported in 1999 (1) GLH 913.

5. The petition is opposed to by learned APP Mr. D.P. Joshi.

6. Despite a close scrutiny, the Court as well as learned APP were unable to identify any material to indicate that the petitioner has connections, mooring or associations in the areas of the adjoining districts wherefrom he has been externed. There is no dispute about the fact that the authority has powers to extern the person from adjoining areas if it is found that he is likely to operate from that area, but for arriving at that finding or conclusion, there has to be some material before the authority to indicate that the petitioner has some associates or connections through whom he can operate by staying in that area. In absence of any such material, the satisfaction recorded by the authority that the petitioner is likely to pursue his activities from the adjoining districts would be of no virtue. In the instant case, the authority has not even recorded a satisfaction that he is likely to operate from adjoining

districts. Without recording any reasons, the petitioner is directed to be externed from contiguous districts of Ahmedabad City, Surendranagar, Mehsana and Gandhinagar. The order therefore gets vitiated. The petition therefore deserves to be allowed.

7. The petition is therefore, allowed. Order of externment dated 30.6.2001 passed by the Sub Divisional Magistrate, Viramgam and the appellate authority both are quashed and set aside. Rule made absolute. D.S permitted.

(A.L.Dave, J.)

*/Mohandas